

SEXTON BROTHERS COAL CO., INC., ET AL.

IBLA 92! 34

Decided September 4, 1997

Appeals from decisions of the Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, declaring performance bonds forfeited for failure to abate surface mining violations under State permit Nos. 82! 165 and 83-C-032.

Affirmed.

1. Surface Mining Control and Reclamation Act of 1977: Bonds: Forfeiture of--Surface Mining Control and Reclamation Act of 1977: Performance Bond or Deposit: Forfeiture

Following withdrawal of approval of a state permanent regulatory program, OSM, as administrator of a subsequent Federal program, may declare a bond issued to ensure reclamation under the state permanent program permit forfeited for failure to abate outstanding violations of the Surface Mining Control and Reclamation Act of 1977, as amended, 30 U.S.C. §§ 1201! 1328 (1994), where the bond obligates the permittee to the state and its successors and assigns.

APPEARANCES: Charles A. Wagner, III, Esq., and Joseph N. Clarke, Jr., Esq., Knoxville, Tennessee, for Appellants; Margaret H. Poindexter, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Knoxville, Tennessee, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Sexton Brothers Coal Company, Inc. (Sexton), the First Trust and Savings Bank (First Trust), and the Exchange Mutual Insurance Company (EMI and hereinafter, collectively, Appellants) have appealed from two August 5, 1991, Decisions, each entitled Order of Forfeiture of Performance Bond, issued by the Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement (OSM). In his Decisions, the Director had declared forfeited two bonds held to ensure reclamation under surface mining permits, Nos. 82! 165 and 83! C! 032, issued by the State of Tennessee to Sexton. He took that action because of a continuing failure to abate various outstanding violations of the Surface Mining Control and Reclamation

Act of 1977 (SMCRA), as amended, 30 U.S.C. §§ 1201! 1328 (1994), and its implementing regulations.

The Tennessee Coal Surface Mining Law of 1980, Tenn. Code Ann. §§ 59! 8! 301 through 59-8! 336, was enacted on May 2, 1980. Effective August 10, 1982, pursuant to section 503 of SMCRA, 30 U.S.C. § 1253 (1994), OSM conditionally approved the State's permanent program for regulating surface mining and reclamation activities. 47 Fed. Reg. 34724 (Aug. 10, 1982).

While under the State permanent regulatory program, the Tennessee Division of Surface Mining and Reclamation (DSM), the State regulatory agency, issued the two permits at issue here to Sexton for surface coal mining in Scott County, Tennessee. Permit No. 82! 165 was a 1! year permit covering 95 (later reduced to 25) acres, which was issued on September 2, 1982. Permit No. 83! C! 032 was a 3! year permit covering 20 acres, which was issued on June 10, 1983. Further, each permit provided:

Pursuant to T[enn.] C[ode] A[nn.] 59! 8! 301 et seq., a permit is hereby granted to engage in surface mining in the State of Tennessee. This permit may be suspended or revoked upon violation of any or all of the conditions set forth in T[enn.] C[ode] A[nn.] 59! 8! 301 et seq., or in such rules and regulations as are promulgated by the Commissioner of Conservation.

(Emphasis added.)

The appeal, with respect to Sexton's permit No. 82! 165 concerns a performance bond (No. 8228 R), in the amount of \$37,500, issued by EMI, and in turn secured by an irrevocable letter of credit issued by First Trust. All three Appellants took the appeal from OSM's August 1991 Decision declaring that bond forfeited. The appeal with respect to permit No. 83! C! 032 concerns a performance bond, in the amount of \$32,900, secured by three Certificates of Deposit (Nos. 6148, 6149, and 6151) issued by First Trust. Only Sexton and First Trust took the appeal from OSM's August 1991 Decision declaring that bond forfeited. In each case, the bond was issued in favor of the State of Tennessee and "its successors and assigns," with Sexton as the Principal.

The performance bond securing permit No. 82-165 reads, in pertinent part:

KNOW ALL MEN BY THESE PRESENTS, That the undersigned Sexton Bros[.] Coal Co., Inc. of \* \* \* Huntsville, T[ennessee] \* \* \*, principal, and Exchange Mutual Insurance Co. of Nashville, T[ennessee] \* \* \*, as surety, are held and firmly bound unto the State of Tennessee (and its successors and assigns) in the penal sum of Thirty! ]Seven Thousand Five Hundred Dollars (\$37,500.00) for payment of which well and truly to be paid to the said State of Tennessee, we hereby jointly and severally bind ourselves, our heirs, administrators, executors, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That, whereas, the above named principal did on the 27[th] day of March, 1981, file with the Division of Surface Mining an application to secure a permit to engage in surface mining in the State of Tennessee; and that in said application the principal estimates that 25 acres of land will be affected by surface mining during the period of one year following the date of beginning of the permit issued pursuant to the aforesaid application requiring this bond.

NOW, if the said Sexton Bros. Coal Co. Inc. shall faithfully perform all the requirements of Section 58! 1540 et seq., Tennessee Code Annotated, and all requirements of all rules and regulations lawfully promulgated and adopted by the Commissioner, Department of Conservation, State of Tennessee, then this obligation shall be void; otherwise, it shall remain in full force and effect.

The reference in the bond to "Section 58! 1540 et seq., Tennessee Code Annotated," was to the preceding State law, enacted in 1972, that governed surface mining and reclamation activities on non! Federal lands within the State. (Consolidated Statement of Reasons for Appeal (SOR) at 2, 11 n.2.) It was repealed with the enactment of the Tennessee Coal Surface Mining Law of 1980. (SOR at 2.)

Similarly, the performance bond securing permit No. 83-C-032 reads, in pertinent part:

KNOW ALL MEN BY THESE PRESENTS, that the undersigned Sexton Brothers Coal Company, Incorporated, of Huntsville, Tennessee, as Principal, is held and firmly bound unto the State of Tennessee, its successors and assigns, in the penal sum of Thirty! two Thousand Nine Hundred \* \* \* Dollars (\$32,900.00) for the payment of which well and truly to be paid, do hereby jointly and severally bind said Principal, all heirs, administrators, executors, successors and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above named Principal did on the 31st day of January, 1983, file with the Division of Surface Mining an application to engage in surface/deep mining in the State of Tennessee; that in said application the Principal estimates that 14 acres of land will be affected by surface/deep mining during the period of 3 years following the date of beginning of the permit issued pursuant to the aforesaid application requiring this bond. Said amount is herewith deposited (in \* \* \* certificate[s] of deposit \* \* \*) with the Division of Surface Mining and shall be received and held in the name of the State of Tennessee, in trust, upon the conditions herein set forth, and Principal does hereby jointly and severally bind itself, its heirs or executors, administrators or successors and assignees, firmly by these presents.

NOW, if said Sexton Brothers Coal Company, Incorporated, Principal, shall faithfully perform all of the requirements of Chapter 547, Tennessee Public Acts of 1972, and all requirements of all rules and regulations lawfully promulgated and adopted by the Commissioner, Department of Conservation, State of Tennessee, then this obligation shall be void; and said sum so deposited shall be returned to the undersigned; otherwise, it shall remain in full force and effect.

The bond likewise referred to "Chapter 547, Tennessee Public Acts of 1972," i.e., the 1972 State surface mining law. (SOR at 2, 11 n.2.)

Effective October 1, 1984, the State repealed its surface mining law. <sup>1/</sup> The OSM withdrew its approval of the State program, effective October 1, 1984, and promulgated a Federal permanent program for regulating surface mining and reclamation activities within the State, which would be administered exclusively by OSM as the regulatory authority. 49 Fed. Reg. 38874 (Oct. 1, 1984).

By letters dated February 25, and April 26, 1985, OSM notified Sexton that its existing bonds did not meet all of the requirements necessary to operate under the Tennessee Federal program. Specifically, OSM found the bonds deficient in that the payee on the bonds is not "The United States or The State of Tennessee," as required by 30 C.F.R. § 942.800(b), and because they referenced the rescinded State statute and regulations, rather than SMCRA and Federal regulations. The OSM required Sexton to submit new bonds containing the required language and provisions of a Surety Bond in the Federal program to substitute for its existing bonds on file. The OSM stated that, absent compliance, it would take appropriate enforcement action. By letters dated June 3, and July 12, 1985, OSM advised that, if new bonds were not received within 15 days, Notices of Violation (NOV's) would be issued requiring the posting of acceptable bonds within 15 days.

Despite initial indications that Sexton would comply, there is no evidence that it did so. See Conversation Record, dated July 9, 1985. Thus, on July 26, and August 12, 1985, OSM issued NOV Nos. 85! 091! 164! 041 and 85! 091! 167! 014, for failure to post an acceptable bond and, on August 23, and October 21, 1985, failure! to! abate Cessation Order (CO)

---

<sup>1/</sup> Just prior to the effective date of the repeal of the 1980 State surface mining law, DSM notified Sexton, in connection with each of the subject permits, that its bond(s) "shall remain in effect until further notice" and that "[t]he balance of the bond(s) shall be released only by this Division when the reclamation of the [permitted] areas is completed and approved in accordance with the provisions of The Tennessee Surface Mining Law of 1980." (Notice(s) of Bond Release/Reduction, dated June 8, 1984 (emphasis added).)

Nos. 85! 091! 276! 002 and 85! 091! 167! 019. Sexton did not seek review of the NOV's and CO's, pursuant to section 525(a) of SMCRA, 30 U.S.C. § 1275(a) (1994), and 30 C.F.R. §§ 942.843 and 843.16.

On November 12, 1987, the Director issued a Notice of Potential Bond Forfeiture, notifying Sexton that OSM was considering forfeiture of the performance bond for permit No. 82! 165 for failure to abate various violations of SMCRA, cited in five NOV's and corresponding CO's issued by OSM between March 8, 1985, and July 1, 1986. The Director stated that Sexton might prevent forfeiture by either satisfactorily abating the violations within 30 days or within the time limits set in an appropriate reclamation agreement, or showing cause why OSM should not proceed with forfeiture. He further noted that, in order to either enter into an agreement or show cause, Sexton was required, within 30 days, to make a written request for an informal conference. Finally, the Director stated that, absent timely abatement or a timely conference request, OSM would proceed with forfeiture of the bond. <sup>2/</sup>

Likewise, on October 21, 1987, the Director issued a Notice of Potential Bond Forfeiture, notifying Sexton that OSM was considering forfeiture of the performance bond for permit No. 83! C! 032 for failure to abate various violations of SMCRA, cited in seven NOV's and corresponding CO's issued by OSM between April 8, 1985, and August 19, 1987. The Director, as he had in the case of permit No. 82! 165, set forth identical conditions under which Sexton might prevent forfeiture, and likewise concluded that, absent timely abatement or a timely conference request, OSM would proceed with forfeiture of the bond. <sup>3/</sup> The Director sent both Notices of Potential Bond Forfeiture certified mail, return receipt requested, to Sexton's address of record with OSM, but delivery was refused. Subsequently, the letters were resent by regular mail. A copy of the November 12 Notice regarding permit No. 82-165 was received on December 23, 1987. The Notice regarding permit No. 83-C-032 was sent to Sexton by regular mail on January 25, 1988, and was presumably received.

In any case, no response to either Notice of Potential Bond Forfeiture was timely made by Sexton. However, on December 10, 1987, EMI requested an informal conference to discuss reclamation in lieu of bond forfeiture with respect to permit No. 82! 165. <sup>4/</sup> On January 12, 1989, following an

---

<sup>2/</sup> A copy of the Director's November 1987 letter to Sexton was sent to EMI, along with a Nov. 12, 1987, cover letter, which stated that EMI could, in lieu of forfeiting the bond, independently enter into a reclamation agreement with OSM.

<sup>3/</sup> A copy of the Director's October 1987 letter to Sexton was sent to First Trust, along with an Oct. 21, 1987, cover letter, which stated that First Trust could, in lieu of forfeiting the bond, independently enter into a reclamation agreement with OSM.

<sup>4/</sup> On Aug. 15, and 16, 1988, First Trust informed the Director that it objected to any forfeiture of the two bonds, arguing that they were issued to the State to secure reclamation under its surface mining law, and thus

informal conference on November 15, 1988, which was attended by representatives of First Trust and EMI, First Trust submitted a proposal for avoiding forfeiture by completing the remaining reclamation of the two minesites. Agreements were drafted by OSM and sent to First Trust for execution on April 2, and to EMI on August 9, 1990, but the Appellants subsequently refused to sign.

By memorandum dated January 4, 1991, the Office of the Field Solicitor, on behalf of OSM, asked the Tennessee Department of Health and Environment (DHE) to assign outstanding performance bonds in effect at the time of repeal of the State surface mining law in 1984, including Sexton's, so that OSM might collect on them and "correct the serious environmental harm occurring on the unreclaimed subject sites." (Memorandum to General Counsel, DHE, dated Jan. 4, 1991, at 1.) The Field Solicitor also noted:

Both OSM and the State of Tennessee agree that the [F]ederal [G]overnment succeeded in interest to any permanent program bonds as to which the State had not commenced forfeiture proceedings prior to October 1, 1984. \* \* \* Consequently, while the State and OSM agree that the [F]ederal [G]overnment succeeded to these bonds by operation of law, assignment of them is a formality which will ensure OSM's ability to collect these funds.

Id. (emphasis added). On July 23, 1991, the Commissioner, DHE, assigned the State's right, title, and interest in Sexton's two bonds to OSM. 5/

The Director then issued the August 1991 Decisions, appealed herein, which in each case notified Sexton that its performance bond was forfeited

---

fn. 4 (continued)

were "nullified" with the repeal of that law in 1984, or that OSM had no authority to enforce that law. (Letters to Director, dated Aug. 12, and 15, 1988, at 1.) First Trust also represented that Sexton agreed with its position. Finally, First Trust asked to be involved in any forfeiture proceedings, including an informal conference, so that it might raise its defenses thereto. The Director responded to First Trust, by letter dated Aug. 19, 1988, stating that the bonds were enforceable and that OSM could institute forfeiture proceedings.

5/ Each Assignment stated that, when OSM became the regulatory authority on Oct. 1, 1984, it, "[b]y operation of law[,] \* \* \* succeeded in interest to any and all existing permanent program performance bonds, excepting those against which the [DHE] had begun forfeiture proceedings as of October 1, 1984." (Assignment of Performance Bond (Permit No. 82! 165), dated July 23, 1991, at 1; Assignment of Performance Bond and Collateral (Permit No. 83! C! 032), dated July 23, 1991, at 1.) It thus stated that the assignment was meant merely to "memorialize [OSM's] succession in interest by operation of law." Id.

as of the date of the Decision, pursuant to SMCRA and 30 C.F.R. Part 800. He further stated that OSM would collect on the bond within 30 days, absent substantial progress toward reclamation of the permitted land. Appellants timely appealed from the Decisions.

Appellants do not dispute the fact that none of the underlying violations of SMCRA had been abated at the time of the Director's August 1991 Decisions. Nor do they assert that any "substantial progress" toward reclamation was made following issuance of the Decisions. Rather, Appellants primarily assert that OSM has no jurisdiction or authority to forfeit the two performance bonds since, in accordance with the 1980 State surface mining law, they were made payable, in the event of a failure to fully reclaim the permitted land or to otherwise comply with applicable law, to the State and not to OSM. (SOR at 8 (citing Tenn. Code Ann. § 59-8-309(a) (1980)).) Appellants thus conclude: "[S]ince the [S]tate law under which the two subject bonds w[ere] posted is clear as to whom the bond obligations may flow \* \* \* ! and clearly omits OSM[] \* \* \* ! any obligation under [the] bond[s] flows only to the State of Tennessee." (SOR at 9! 10.)

Further, while recognizing that the bonds provide that they are payable to the State and its "successors and assigns," Appellants contend that, under State precedent, this language is without effect, and thus mere surplusage, since the State never had any authority under the 1980 State surface mining law or other law to assign the bonds to OSM. (SOR at 10 (citing Polk v. Plummer, 21 Tenn. 500, 509 (Tenn. 1841)).) They further assert that, absent any such authority under State law, the July 23, 1991, assignments from the State to OSM were "nullit[ies]." (SOR at 11.) For both these reasons, Appellants contend that OSM is not the "obligee" on the bonds. (SOR at 10.)

Alternatively, Appellants contend, assuming OSM is the obligee, OSM has no authority to forfeit the bonds since the bonds provide for forfeiture only in the event of a failure to comply with the 1972 State surface mining law and that law has been repealed since 1980. Appellants argue that the bonds are properly considered, under State precedent, "common law," not "statutory," bonds since, when issued, they did not comply with the requirements of the 1980 State surface mining law in effect at that time, Tenn. Code Ann. § 59-8-309(b) (1980), because they were not expressly conditioned on compliance with the 1980 law, but with the 1972 law. (SOR at 11! 12 (citing State v. Tutt, 135 S.W.2d 449, 450 (Tenn. 1940), and cases cited therein).) Appellants further note that, even if they were statutory bonds when issued, they became common law bonds with the repeal of the 1980 law. (SOR at 12 n.3.) Since they are common law bonds, Appellants assert that, under State precedent, they "create[] no liability beyond [their] terms." (SOR at 12! 13 (citing Spears v. Sherman, 256 S.W. 436, 436! 37 (Tenn. 1923)).) Thus, Appellants conclude that the bonds can only be forfeited for noncompliance with the 1972 law, and that, since that law has been repealed, "there are no requirements thereunder, and the bond terms therefore do not permit forfeiture [by OSM]." (SOR at 14.)

[1] The two performance bonds at issue here are expressly conditioned on compliance with the 1972 State surface mining law, which had already been repealed at the time of issuance of the bonds on August 1, 1981, and June 10, 1983. Further, the bonds specifically acknowledge that the "CONDITION" for their issuance was the submission by Sexton of applications for permit Nos. 82! 165 and 83! C! 032 on March 27, 1981, and January 31, 1983, when the 1972 State law was no longer in effect.

Those permits, however, were expressly issued pursuant to the 1980 State surface mining law. At the time of issuance of the permits, that law required, in the case of permanent program permits, submission of a bond conditioned upon compliance with the law. Tenn. Code Ann. §§ 59! 8! 307(a) and 59! 8! 309 (1980). We thus construe the bonds, submitted in conjunction with permit issuance, to be conditioned upon compliance with the 1980 State law. See 11 C.J.S. Bonds § 34, at 27! 28 (1995).

This was also our holding in Exchange Mutual Insurance Co. (On Reconsideration), 124 IBLA 72 (1992), and Exchange Mutual Insurance Co., 119 IBLA 296 (1991). 6/ Therein, in considering bonds that were likewise issued to ensure reclamation under State permanent program permits, but which were expressly conditioned on compliance with the requirements of "Section 58! 1540 et seq., Tennessee Code Annotated" (i.e., the 1972 State surface mining law), 124 IBLA at 73 n.3, we concluded that the bonds became statutory bonds pursuant to the 1980 State law, 124 IBLA at 74 and 119 IBLA at 299. 7/ The district court agreed with the Board. Exchange Insurance Co. v. U.S. Department of Interior, 820 F. Supp. at 359.

---

6/ Both of the Board's Decisions in the Exchange Mutual Insurance Co. cases were affirmed by the U.S. District Court for the Eastern District of Tennessee in Exchange Insurance Co. v. U.S. Department of Interior, 820 F. Supp. 357 (E.D. Tenn. 1993).

7/ In the two Exchange Mutual Insurance Co. cases, both permits were issued after Aug. 10, 1982, but before Oct. 1, 1984, and thus under the State's permanent regulatory program. Exchange Mutual Insurance Co. (On Reconsideration), 124 IBLA at 74. Further, as in the present case with the bond issued in support of permit No. 82! 165, both bonds were originally executed in 1981 in connection with interim program permits. Id. at 73, 74. In addition, as in the case of the bond for permit No. 82! 165, EMI consented to the "transfer" of the bonds to support the new permanent program permits. Id. at 74; Letter to DSM from EMI, dated Aug. 30, 1982. Thus, in all material respects, the two Exchange Mutual Insurance Co. cases are identical to the situation with permit No. 82! 165, and thus are directly applicable. We further hold that the cases are also applicable to the situation with permit No. 83! C! 032 since, even though the subject bond was not originally executed in connection with an interim program permit and then transferred, it was, as in the Exchange Mutual Insurance Co. cases, expressly conditioned on compliance with the repealed 1972 State surface mining law, which the Board implicitly found does not preclude it from being a statutory bond pursuant to the 1980 State law.



We further hold that, when the 1980 State surface mining law was supplanted by SMCRA, the bonds were conditioned on compliance only with SMCRA. This was also our holding in Exchange Mutual Insurance Co. (On Reconsideration) and Exchange Mutual Insurance Co., wherein we rejected an identical challenge by EMI that bonds that were similarly expressly conditioned on compliance with the requirements of "Section 58! 1540 et seq., Tennessee Code Annotated," 124 IBLA at 73 n.3, "may not be considered statutory bonds for Federal purposes," 124 IBLA at 74 and 119 IBLA at 299. Rather, we held that the bonds were statutory bonds pursuant to SMCRA. Id. The district court again agreed with the Board. Exchange Insurance Co. v. U.S. Department of Interior, 820 F. Supp. at 359.

We have been shown no reason to deviate from our holdings in Exchange Mutual Insurance Co. (On Reconsideration) and Exchange Mutual Insurance Co., and thus we follow them here.

We therefore hold that, at the time of the Director's October and November 1987 Notices of Potential Bond Forfeiture and his August 1991 Decisions, the bonds at issue here were statutory bonds conditioned on compliance with SMCRA.

Next, we conclude that Appellants are plainly mistaken in their assertion that OSM is not an obligee under the bonds. Rather, we hold, in accordance with our Decisions in Exchange Mutual Insurance Co. (On Reconsideration), 124 IBLA at 75, and Exchange Mutual Insurance Co., 119 IBLA at 300, that OSM was a "successor," within the meaning of that term in the bonds, at the time of issuance of the October and November 1987 Notices of Potential Bond Forfeiture and, likewise, at the time of the August 1991 Decisions declaring the bonds forfeited. <sup>8/</sup> That occurred by operation of law. This was also the opinion of the district court in the Exchange Mutual Insurance Co. case, which specifically stated that "the [F]ederal Office of Surface Mining became the [S]tate's successor in interest to the bonds as the sole regulatory authority in the [S]tate." Exchange Insurance Co. v. U.S. Department of Interior, 820 F. Supp. at 359.

Finally, Appellants generally assert that, in requiring Sexton to post new bonds in 1985, OSM recognized that the existing bonds are essentially invalid under Federal regulations, since DSM, not OSM, is the obligee and they are conditioned on compliance with a repealed State law, not SMCRA.

---

<sup>8/</sup> We therefore need not decide whether OSM is properly considered an "assignee" under the bonds by virtue of the belated assignments from the State in July 1991. We note that, in Exchange Mutual Insurance Co. (On Reconsideration), the Board adjudicated an appeal from a decision by the Director, which, unlike the present case, declared a bond forfeited before the State assigned it to OSM. See 124 IBLA at 73, 74. Thus, the Board did not address whether OSM was properly considered an "assignee" under that bond, but rather relied solely on OSM's status as a "successor" under the bond. That is likewise sufficient here.

(SOR at 9, 15.) We do not view OSM's 1985 Orders as an admission that it was not the "successor" under the existing bonds or that they cannot be construed as being conditioned on compliance with SMCRA. See Answer at 12; Exchange Insurance Co. v. U.S. Department of Interior, 820 F. Supp. at 358! 59. The OSM directives in 1985 to post new bonds appear to be merely an attempt to achieve compliance with SMCRA and applicable Federal regulations.

We, therefore, conclude that the Director, in his August 1991 Decisions, properly forfeited Sexton's two performance bonds in connection with its permit Nos. 82! 165 and 83! C! 032, since OSM had ample jurisdiction and authority, as the obligee, to do so. Spencer Mountain Coal Co., 137 IBLA 53 (1996). This conclusion properly accords with the purposes sought to be accomplished by all the parties involved in bond issuance, as persuasively argued by OSM:

Sexton Brothers wanted permits which would allow it to mine coal. In exchange for granting the licenses to mine, the regulatory authority required assurance that upon completion of the mining operations, the mine sites would be reclaimed \* \* \*. The sureties agreed to insure Sexton Brothers' performance of its promised reclamation obligations. Sexton Brothers has received the contracted! for performance from the regulatory authority[.] [T]he obligation to perform reclamation is both unchanged and unfulfilled to this date. The extensive environmental damage created and abandoned on these two permits is exactly the problem which the parties contemplated in requiring reclamation bonds to be posted. Pursuant to [SMCRA] \* \* \*, OSM has properly exercised its jurisdiction to enforce the promises made by Sexton Brothers and the guarantors of its promises.

(Answer at 16! 17; see 11 C.J.S. Bonds § 33 (1995).) Our construction of the subject bonds also properly accords with the intent of SMCRA to ensure appropriate reclamation of permitted areas, regardless of whether the State or OSM is the regulatory authority or other technicalities. Exchange Mutual Insurance Co., 119 IBLA at 299! 300; 11 C.J.S. Bonds § 32, at 25 (1995).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the August 5, 1991, Decisions of the Director, Knoxville Field Office, OSM, are affirmed.

---

Gail M. Frazier  
Administrative Judge

I concur.

---

C. Randall Grant, Jr.  
Administrative Judge

